

ASSEMBLY BILL NO. 2973 1980 REGULAR SESSION

AUTHOR O'CONNELL

DATE RECEIVED 6-29 1986

LAST DAY TO ACT 7-11 1986

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Legislative Counsel of California

BION M. GREGORY

Sacramento, California
July 1, 1988

Honorable George Deukmejian
Governor of California
Sacramento, CA 95814


Assembly Bill No. 2973

Dear Governor Deukmejian:

Pursuant to your request, we have reviewed the above-numbered bill authored by Assembly Member O'Connell and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
John T. Studebaker
Principal Deputy

JTS:wld

Two copies to Honorable Jack O'Connell,
pursuant to Joint Rule 34.

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Assembly California Legislature

JACK O'CONNELL
ASSEMBLYMAN, THIRTY-FIFTH DISTRICT

CHAIRMAN, SUBCOMMITTEE ON EDUCATIONAL REFORM
CHAIRMAN, WAYS AND MEANS SUBCOMMITTEE #3 ON
RESOURCES, AGRICULTURE AND THE ENVIRONMENT

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ON EDUCATION
SELECT COMMITTEE ON CHILD
CARE

July 5, 1988

The Honorable George Deukmejian
Governor, State of California
State Capitol
Sacramento, California 95814

Dear Governor Deukmejian:

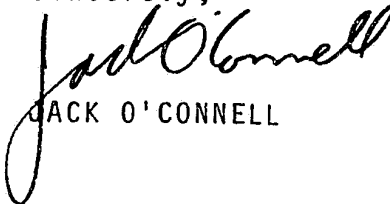
You have before you for signature AB 2973 which relates to liability for injuries suffered by a person who is bitten by a dog.

Specifically, AB 2973 provides that no cause of action to a governmental agency shall arise for damages suffered as the result of a dog bite by a military or police dog assisting a law enforcement or military employee in the line of duty. The bill provides for specific instances where the dog is being used in the line of duty. The immunity from liability does not apply, however, if the victim was not a part of the conduct for which the dog was being used.

I introduced this bill at the request of the City of Oxnard, City Attorney's Office. They are currently facing two lawsuits brought by individuals who were bitten by a police dog while resisting arrest. The County of San Bernardino was faced with the same problem and asked that legislation be introduced to take care of the problem. SB 2122 by Senator Rogers was incorporated into AB 2973 at a hearing of the Senate Judiciary Committee. AB 2973 will solve the problems now faced by the City of Oxnard and the County of San Bernardino.

AB 2973 is supported by the League of California Cities, the California Peace Officers' Association and the City of Oxnard. There is no opposition. I urge you to sign AB 2973 into law.

Sincerely,


JACK O'CONNELL

JO:dwp:tam

ENROLLED BILL REPORT

STATE OF CALIFORNIA

AGENCY YOUTH AND ADULT CORRECTIONAL AGENCY	BILL NUMBER AB 2973
DEPARTMENT, BOARD OR COMMISSION CORRECTIONS	AUTHOR O'CONNELL

SUMMARY

Provides limited immunity from liability for injuries caused by dogs used in military or police work.

IMPACT ASSESSMENT

Existing law provides for strict liability for damages resulting from dog bites. Current law makes no exception for dogs engaged in military or police work.

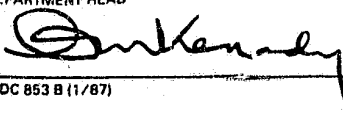
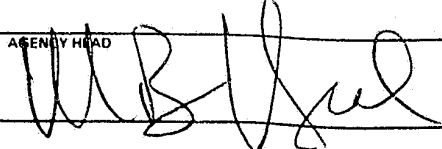
This bill would exempt governmental agencies from liability suits for dog bites involving military or police dogs under the following circumstances:

1. Where the bite occurred while the dog was defending itself from annoying, harrassing, or provoking acts; or
2. Where the dog was assisting an employee of the agency in:
 - a. in the apprehension or holding of a suspect where the employee has a reasonable suspicion of the suspect's involvement in criminal activity.
 - b. in the investigation of a crime or possible crime.
 - c. in the execution of a warrant.
 - d. in the defense of a peace officer or another person.

The exemption only applies where the person bringing suit is, or is suspected to be, a party to or participant in the acts which were the subject of the use of the police or military dogs and the agency has a written policy on the necessary and appropriate use of a dog in police or military work.

The Department of Corrections employs canine teams in searching vehicles and places for narcotics and controlled substances and apprehending escaped inmates. Written procedures relating to use of canine teams are contained in a departmental manual.

RECOMMENDATION**SIGN THE BILL**

DEPARTMENT HEAD 	DATE 7/1/88	AGENCY HEAD 	DATE 7-1-88
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ARGUMENTS PRO AND CON

Pro: This bill would limit the liability of law enforcement and military agencies using dogs.

Con: None.

RECOMMENDATION

Sign the bill.

ENROLLED BILL REPORT

AGENCY

RESOURCES

BILL NUMBER
AB 2973 (6/16/88)DEPARTMENT, BOARD OR COMMISSION
PARKS AND RECREATION

RELATED BILL: SB2122

AUTHOR
O'CONNELLSUBJECT: LIABILITY: DOG BITES

BILL SUMMARY: This bill would exempt bites from dogs employed in military or police work from any private right of action if the bite occurred while the dog was defending itself from an annoying, harassing or provoking act, or assisting an employee of the agency in any of the duties listed below if a) the victim was not a party to or participant, nor suspected to be a party to or participant in the act or acts which prompted the use of the dog in the military or police work, and b) the governmental agency using a dog in these capacities had adopted a written policy on the necessary and appropriate use of the dog in this capacity.

- 1) The apprehension or holding of a suspect or possible suspect;
- 2) The investigation of a crime or possible crime;
- 3) The execution of a warrant;
- 4) The defense of a peace officer or other person.

The bill also states that it is the intent of the Legislature to provide only limited immunity from the strict liability imposed by existing law, and that other causes of action predicated on negligence, intentional tort, and other common law theories are unaffected.

HISTORY: Existing law establishes that an owner is strictly liable for any damages suffered by any person bitten by a dog while in a public place or lawfully in a private place, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness (Civil Code Section 3342). Existing law also establishes that the owner of any dog which has bitten a human being must take reasonable steps to remove any danger which the dog presents to other persons, unless the bites occurred while a dog used in police or military capacity was in performance of its duty. This statute does not override established legal principles of assumption of risk and willfully invited injury.

An identical bill, SB 2122 (Rogers) was referred to interim study pending the outcome of this bill.

SPONSORSHIP: This bill is sponsored by the City of Oxnard, which claims that the strict liability in Section 3342 of the Civil Code exposes them to groundless lawsuits. The City as well as its police officers, are frequently sued by arrestees bitten by the City's police dogs, even if the arrest was lawful, did not involve the use of unreasonable force, or the arrestee resisted or provoked the dog. The City of Oxnard argues that defenses such as assumption of risk and willful invitation or provocation are too limited against presumption of strict liability. The City cites Civil Code Section 3342.5 and Penal Code Section 299.5 as precedents for the proposed military and police dog immunity.

Amendments made in the Assembly Committee on the Judiciary clarifying specified instances where the dog can be considered to be performing in the line of duty satisfied earlier concerns from the ACLU relating to an individual's right to action. The bill was amended again in the Senate Committee on the Judiciary to assure the right of action for innocent bystanders.

COMMENDATION:

SIGN

DEPARTMENT HEAD

Henry R. Agonia

DATE

7/1

AGENCY HEAD

DATE

7/1/88

SUPPORT

City of Oxnard
League of California Cities
California Peace Officer's Assn.
California State Sheriff's Assn.
California Police Chiefs Assn.

OPPOSITION
Unknown

COMMENTS: Currently no uniform standards for the training and certification of dogs and handlers exist, however, AB 1760 (Clute) which would have required the Commission on Peace Officer Standards and Training (POST) to study and recommend training standards to the Legislature by 4/19/89 failed passage in the Senate Committee on the Judiciary.

At present, DPR has seven canine peace officer units. In the twenty years that the department has employed canine patrol units, only two bites have occurred, and none have resulted in lawsuits. DPR maintains rigorous training and certification standards for both its dogs and their handlers. DPR canines are purchased through Tyson Kennels, worldwide suppliers of military and police dogs, after 6 months to 3 years of intensive training. After the dog is purchased, the handler must complete a concentrated training course with the dog before leaving the kennels, and an additional 6 months of on-site training before becoming certified. DPR policy requires that both dog and handler be recertified on a yearly basis.

FISCAL IMPACT: This bill would reduce the risk of future legal costs associated with lawsuits initiated by individuals bitten by DPR police dogs in the line of duty.

RECOMMENDED POSITION: Sign.

REASON FOR RECOMMENDATION: This bill would directly benefit DPR by reducing the risk of liability lawsuits by individuals bitten by DPR canines in the line of duty.

<u>Assembly</u>	<u>Senate</u>	<u>Concurrence</u>
Ayes 71	Ayes 38	Ayes 74
Noes 0	Noes 0	Noes 0

CONTACT: Marilyn Olson
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MCD

THIRD READING

SENATE RULES COMMITTEE

Office of
Senate Floor Analyses
1100 J Street, Suite 120
445-6614

Bill No. AB 2973
Author: O'Connell (D), et al
Amended: 6/16/88 in Senate
Vote Required: Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	AB 2973	
DATE OF HEARING:	5-24-88	
SENATORS:	AYE	NO
Doolittle	✓	
Keene	✓	
Marks	✓	
Petris		
Presley	✓	
Richardson		
Roberti	✓	
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	9	0

Assembly Floor Vote: 71-0, p. 7113, 4/28/88

SUBJECT: Dog bitesSOURCE: City of Oxnard

DIGEST: This bill provides that a public entity be immune from liability for injuries caused by dogs used in military or police work, as specified.

ANALYSIS: Under existing law, an owner of a dog is strictly liable for any injuries suffered by any person who is bitten by the dog if the person is in a public place or lawfully in a private place, "regardless of the former viciousness of the dog or the owner's knowledge of such viciousness." (Civil Code Section 3342.)

This bill would exempt from liability bites by dogs used in military or police work where the injury results while the dog was defending itself from an annoying, harassing or provoking act, or assisting an employee of the agency in any of the following:

1. Apprehending or holding a suspect where the employee has a reasonable suspicion of the suspect's involvement in criminal activity
2. Investigating a crime
3. Executing a warrant
4. Defending a peace officer or other person.

This bill would not apply in any case where the victim of the bite was not a party to, nor suspected to be a party to, the act that prompted use of the dogs.

CONTINUED

This bill specifically states that the provisions shall only apply where the agency using the dog or dogs has adopted a written policy on the proper use of dogs.

The purpose of this bill is to protect a public entity from strict civil liability for the use of police or military dogs to apprehend and arrest suspected criminals.

Similar Legislation

SB 2122 (Rogers) is in the Senate Judiciary Committee.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 6/16/88)

City of Oxnard (source)
League of California Cities
California Police Officers Association

ARGUMENTS IN SUPPORT: According to the source, the City of Oxnard, Civil Code Section 3342's standard of strict liability exposes a public entity to "groundless" lawsuits. Specifically, the public entity and its police officers are too frequently sued by arrestees who are bitten by the public entity's police dogs. These lawsuits occur even if the arrest was perfectly lawful, did not involve the use of unreasonable force, or, lastly, the arrestee resisted arrest or otherwise provoked the dog.

Proponents also contend that "it is inappropriate to have public agencies incur liability for dog bites that occur as a result of the apprehension and arrest of suspected offenders. To impose liability in such cases effectively undermines police efforts and may well force peace officers to resort to other means of apprehension that pose a greater danger to both the arresting officer and a fleeing suspect."

RJG:lm 6/16/88 Senate Floor Analyses